



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

SUCCESSION CAUSE NO. 1040 OF 2012

IN THE MATTER OF THE ESTATE OF TITUS DUTA NGWILI (DECEASED)

SOLOMON MUANGE NTHULI.....PETITIONER

R U L I N G

1. **Titus Duta Ngwili** (Deceased) died domiciled in **Kenya** on the **11th December, 2006** at **Muumandu**. A grant of letters of administration intestate (grant) were issued to **Solomon Muange Nthuli** and confirmed on **26th March, 2014**.
2. On the **24th September, 2014** **Priscilla Mbuki Tuta**, the Applicant filed an application seeking revocation and/or annulment of the grant.
3. The application is premised on grounds that the grant was obtained fraudulently by the making of a false statement or by concealment from court of something material to the case and more specifically that the Petitioner herein was formerly **Member Number 1085** and Proprietor of all that piece of land formerly known as **Plot No. 459** (Currently known as **Machakos Konza North Block 1/645**)(subject plot) **Konza Ranching and Farming Co-operative Society**. In the year **1985**, the Petitioner entered into an agreement with the deceased to transfer to him his shares and the subject plot at the **Konza Ranching and Farming Co-operative Society**. The transfer of shares was effected and the deceased issued with a share certificate for **Member Number 1085** and **Title deed** over all that property by **Konza Ranching and Farming Co-operative Society**. Therefore, the grant was obtained by means of untrue allegation of a fact essential in point of law to justify the grant notwithstanding that the allegation was made in ignorance or inadvertently.
4. The Applicant swore an affidavit in support of the application where she deposed that she is a widow of the deceased. She was not aware of the petition until she was served with summons for rectification of the grant; the grant was issued to a stranger and a person of lesser authority; consequent to the agreement the Petitioner had with the deceased, transfer of shares was effected to the deceased. These requires review and setting aside of the court order dated **20th February, 2013**.
5. In a reply thereto, the Petitioner swore a replying affidavit denying having made a false statement to the court. He deposed that indeed he was **No. 1085** at **Konza Ranching Co-operative Society Ltd** and was given **Plot No. 459**. That he transferred the membership of **Konza Ranching Society** as well as **Plot No. 459** to the deceased but with the understanding that they would share the properties equally, an agreement that was signed by both the deceased and the Applicant.
6. On the **9th February, 1985** the wife of the deceased (Applicant) signed an agreement that showed that the deceased was to pay the Petitioner **Kshs. 15,000/=** between **9th February, 1985** to **27th July, 1986** for the five acres and was entitled to **50%** of shares in the **Plot No. 459** that was changed to **Konza Block 1/645**. Following the transfer he (Petitioner) lodged a complaint with the society and it was established that the subject plot was jointly owned.
7. Further, he stated that prior to obtaining letters of administration he made a citation which was

- served upon the Applicant and all Interested Parties. On the **1st March, 2013** the Applicant appeared before court and she was given two (2) months to act but she did not comply. When he petitioned for a grant of letters of administration neither her nor any other person made any objection. The objection has been raised after he applied to have the grant rectified.
8. He denied being interested in the property that the deceased's family is entitled to and urged the court to order the Applicant to refund the costs he has incurred should the grant be revoked.
 9. The application was canvassed by way of written submissions that have been duly considered.
 10. The Petitioner in this matter moved the court by way of citation after his family members who were entitled to apply for the grant failed to do so. Persons cited were:

i. Priscillah Mbiki Tuta (Applicant).

ii. Tabitha Mumbi Tuta.

iii. Wanza Mutele Tuta.

iv. Mavisu Tuta.

11. The persons who represented family members of the deceased appeared in court and were granted two (2) months within which to petition for letters of administration in respect of the Estate of the deceased. However they failed and/or neglected to comply. Consequently the Respondent was authorized to take out letters of administration by the court.
12. Where a person dies intestate like in the instant case, priority is given to his survivors in order of consanguinity to petition for a grant but where they are not willing to do so any other person can do it if authorized by the court. **(See Section 66 of the Law of Succession Act).**
13. At the point of confirmation of grant the Respondent demonstrated that he was **Member No. 1085** at **Konza Ranching Co-operation Society** and owner of **Plot No. 459**. He transferred his membership as well as the plot to the deceased. However, the property was to be owned jointly. According to the schedule per the certificate of confirmation of grant they were to share the property equally.
14. The Respondent adduced in evidence a letter dated **6th April, 1995** authored by the **Branch/Farm Manager, Konza Ranching and Farming Co-operative Society Limited** which stipulated that **Plot No. 1/645 Konza Ranch** measuring **4.0 Hectares** was jointly owned by himself and the deceased. This was pursuant to the agreement they entered into that was witnessed by their wives, the Applicant herein inclusive.
15. However there is an application for transfer of shares dated **7th January, 1985** indicating that the Respondent herein transferred his shares and plot to the deceased on his own volition. This culminated into issuance of a membership card dated **13th June, 1985** to the deceased. In the result a title deed for **Title Number Machakos Konza North Block 1/645** for **4.0 Hectares** was issued to the deceased on the **1st day of April, 1992**.
16. The information of existence of a title deed/certificate of registration of the land in issue was not brought to the knowledge of this court at the point of confirmation of the grant.
17. Looking at the petition, the affidavit sworn (**P & A 5**) indicates that the deceased was survived by only one person. There was non-disclosure of persons who survived him who were well known to the Respondent. Although the Respondent tried to be as candid as possible, issues raised require interrogation by the court as the allegations set out may have been given inadvertently or out of ignorance. This makes the grant ineffective.
18. From the foregoing, I do revoke the grant issued herein to **Solomon Muange Nduli** and direct as follows:

- A fresh grant of letters of administration intestate in respect of the Estate of Titus Nduta Ngwili be and is hereby issued to:

1. *Priscilla Mbiki Tuta.*
2. *Solomon Muange Nthuli.*

19. Each party shall bear their own costs.

20. It is so ordered.

Dated at Kitui this 16TH day of NOVEMBER, 2015.

L. N. MUTENDE

JUDGE

Dated, Signed and Delivered at Machakos this 2nd day of December, 2015.

P. NYAMWEYA

JUDGE